

ANALYSIS

This ordinance amends Title 5 – Personnel, of the Los Angeles County Code by:

- Revising portions of Section 5.19.020, relating to the definition of CAO and QDRO and to replace references to CDROs with references to QDROs; 5.19.100, relating to timing of benefits distributions, 5.19.110 relating to correction of plan errors; and 5.19.175 relating to suspension of distributions upon notification of a pending QDRO, time and form of payment for alternate payees and replacing references to CDRO with references to QDRO.
- Revising portions of Sections 5.25.020, to add definition of QDRO and replace references to CDROs with references to QDROs; 5.25.050, relating to matching contributions; 5.25.080, relating to distributions of rollovers; 5.25.090 relating to correction of plan errors and expenses charges to the plan; and 5.25.125, relating to suspension of distributions upon notification of a pending QDRO, time and form of payment for alternate payees and replacing references to CDRO with references to QDRO.

- Revising portions of Sections 5.26.110, relating to matching contributions on post-termination compensation and amount of matching contributions; 5.26.360, relating to correction of plan errors; 5.26.420, relating to expenses charges to the plan; and 5.26.465, relating to time and form of payment for alternate payees suspension of distributions upon notification of a pending QDRO.

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By 

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HSM:asv
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ORDINANCE NO. 2010-0063

An ordinance amending Title 5 – Personnel, of the Los Angeles County Code, relating to salary and fringe benefits.

The Board of Supervisors of the County of Los Angeles ordains as follows:

SECTION 1. Section 5.19.020 is hereby amended to read as follows:

5.19.020 Benefit distributions.

. . . .

C. "Alternate Payee" means any spouse or former spouse of a Participant who is recognized under a ~~CDRO~~QDRO as having a right to receive all, or a portion of, the benefits payable under the Plan with respect to such Participant.

. . . .

G. "CAO" means the Chief ~~Administrative~~ Executive Officer of the County appointed by the Board pursuant to the Los Angeles County Code.

~~H. "CDRO" means a "certified domestic relations order," which is a domestic relations order that the Administrative Committee has determined satisfies the requirements of a qualified domestic relations order, as defined in Code section 414(p)(1), and is consistent with the terms of this Plan.~~

H. "Code" means the Internal Revenue Code of 1986, as amended.

J. "Compensation" means the amount of an Employee's wages as defined for purposes of Section 3121 of the Code; provided that the amount of an Employee's wages taken into account under the Plan for any Plan Year (1) shall include any Deferred Compensation Contributions made on behalf of the Employee for such Plan

Year, but (2) shall not exceed the contribution and benefit base determined under Section 230 of the Social Security Act for such Plan Year.

KJ. "County" means (i) the County of Los Angeles, (ii) any governmental entity of which the Board is the governing body, and (iii) any Trial Court Entity to the extent participation in the Plan by such Entity is authorized by State law or rules of court and provided such Entity has not elected not to participate in the Plan.

LK. "Deferred Compensation Contribution" means a Participant's Basic Deferred Compensation Contribution and Supplemental Deferred Compensation Contribution, if any.

ML. "Disability" means the complete and continuous inability and incapacity of the Participant to perform the duties of his or her position with the County.

NM. "Discretionary Trustee" means a Trustee who, under the terms of the Trust Agreement, has the discretionary authority to invest the Plan assets in one or more Investment Funds.

ON. "Effective Date" means January 1, 1992. The Restatement Effective Date is January 1, 1999, unless a provision expressly states otherwise. Certain provisions of this amendment and restatement, however, are effective before or after the effective date. Provisions which are effective prior to the Effective Date shall be deemed to amend the corresponding provisions of the Plan as amended and in effect before this restatement. Events occurring before the applicable effective date of any provisions of this restatement shall be governed by the applicable provisions of the Plan in effect on the date of the event. Certain provisions of this Plan as amended are intended as good

faith compliance with the requirements of EGTRRA and are to be construed in accordance with EGTRRA and guidance issued thereunder.

PQ. "Eligible Earnings" means any compensation for service performed for the County which is currently includible in gross income under the Code. On or after January 1, 2003, Eligible Earnings shall have the same meaning as Includible Compensation.

QP. "Eligible Rollover Distribution" means any distribution made on or after January 1, 2002 of all or part of the balance to the credit of the Participant in an Eligible Retirement Plan other than: (i) any distribution which is one of a series of substantially equal periodic payments made not less frequently than annually for the life (or life expectancy) of a Participant or beneficiary or the joint lives (or joint life expectancies) of such individual and his designated beneficiary, or for a specified period of 10 years or more; (ii) any distribution to the extent such distribution is required by Code section 401(a)(9); (iii) any distribution which is made upon hardship or unforeseeable emergency of the employee; and (iv) any distribution which is (a) a return of elective deferrals described in Section 1.415-6(b)(6)(iv) of the Treasury Regulations which is returned due to the limitations under Code section 415, (b) a corrective distribution of excess contributions described in Section 1.401(k)-1(f)(4) of the Treasury Regulations, excess deferrals described in Section 1.402(g)-1(e)(3) of the Treasury Regulations or excess aggregate contributions described in Section 1.401(m)-1(e)(3) of the Treasury Regulations, together with the income allocable thereto, (c) a loan treated as a distribution under Code section 72(p) and not excepted from such treatment under

Code section 72(p)(2), (d) a deemed distribution of a loan in default, (e) a dividend on employer securities described in Code section 404(k), (f) the P.S. 58 cost of life insurance coverage, and (g) any other similar item designated by the Commissioner of Internal Revenue.

RQ. "Eligible Retirement Plan" means: (i) an individual retirement account under Code Section 408(a); (ii) a "conduit" individual retirement account described in Code Section 408(d)(3)(A)(ii); (iii) an individual retirement annuity under Code Section 408(b); (iv) an annuity plan described in Code Section 403(a); (v) a plan which is qualified under Code Section 401(a); (vi) a tax-sheltered annuity contract under Code Section 403(b); (vii) an eligible deferred compensation plan under Code Section 457(b) which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state; and (viii) effective for distributions made on or after January 1, 2008, a Roth IRA under Code Section 408A.

SR. "Employee" means an individual who has been determined by the County (regardless of any determination made by any other person or entity) to be a common law employee of the County for federal income and/or employment tax purposes. If it is determined that an individual was erroneously categorized as not being an Employee, he or she shall be treated as an Employee under the Plan only prospectively from the date of such determination.

TS. "Entry Date" means the later of January 1, 1992 or the date on which an Employee satisfies the participation requirements of Section 5.19.030.

UT. "Includible Compensation" means wages, within the meaning of Section

3401(a) of the Code (for purposes of income tax withholding) but determined without regard to any rules that limit the remuneration included in wages based on the nature or location of the employment or the services performed, paid to an Employee by the County for services performed for the County. Includible Compensation also includes (i) any elective deferral (as defined in Code section 402(g)(3)), such as Tax Deferred Contributions under the County of Los Angeles Savings Plan, (ii) any amount which is contributed to a plan sponsored by the County at the election of the Employee and which is not includible in gross income under Code section 125, 132(f)(4) or 457, and (iii) any amount that is not available in cash to an Employee under the Choices, Options, Flexible Benefit Plans or Mega-Flex Plans (or a successor plan) because the Employee is unable to certify that the Employee has other health coverage. Any item of taxable income that is excluded from this definition of Includible Compensation may not be deferred in accordance with a Participant's Participation Agreement.

VU. "Investment Account" means an account established by the Trustee for a Participant pursuant to Section 5.19.070, comprised of the Deferred Compensation Contributions and Matching Contributions made by the County on behalf of such Participant, and any gains or losses which result from investment of the account.

WV. "Investment Fund" means any investment vehicle in which the Plan assets are invested. Any such Investment Fund shall be consistent with any limitations on forms of investment imposed under applicable State law.

XW. "Investment Manager" means a person or entity appointed by the Administrative Committee or by the Trustee if, under the Trust Agreement, the Trustee

is a Discretionary Trustee, who, with respect to an Investment Fund, has the discretion to determine which assets in such Fund shall be sold (or exchanged) and what investments shall be acquired for such Fund or a person or entity that provides investment services to an investment company registered under the Investment Company Act of 1940. Any Investment Manager must be either registered as an investment adviser under the Investment Advisers Act of 1940, a bank as defined thereunder or an insurance company qualified to manage, acquire or dispose of Plan assets under the laws of more than one state, provided, however, that this requirement shall not apply to the County Treasurer and, with respect to an Investment Fund that provides for investments in securities issued by an investment company registered under the Investment Company Act of 1940, the requirements of that act shall control. Any Investment Manager shall accept such appointment in writing and shall constitute a fiduciary with respect to the investment of Plan assets held in the particular Investment Fund for which the appointment applies, unless such person would not be treated as investing assets of the Plan if the Plan was covered by the Employee Retirement Income Security Act of 1974, as amended.

YX. "LACERA" means the Los Angeles County Employees Retirement Association.

ZY. "County Contribution" means an amount equal to three percent of a Participant's Compensation that is credited by the County to such Participant's Investment Account.

AAZ. "Normal Retirement Age" means age 70½, unless the Participant shall

have designated an alternative normal retirement age. A Participant's Normal Retirement Age shall not be earlier than age 65, and shall not be later than age 70½. If a Participant uses the increased deferral limit set forth in Section 5.19.060A2, such Participant shall be deemed to have selected as his or her Normal Retirement Age the third Plan Year following the first Plan Year in which such increased limit is utilized or such earlier year as is necessary to comply with the limitations set forth above. Once a Participant has utilized the increased deferral limit to any extent, his or her Normal Retirement Age may not thereafter be changed for the purpose of utilizing the additional deferral limit provided under Section 5.19.060A2 of this Plan.

~~BB~~AA. "Participant" means an Employee (or former Employee) who has satisfied the eligibility requirements of Section 5.19.030 and who has not yet received a distribution of his entire Investment Account.

~~CC~~BB. "Plan" means the County of Los Angeles Pension Savings Plan, the terms and provisions of which are herein set forth, as the same may be amended, supplemented or restated from time to time.

~~DD~~CC. "Plan Administrator" means the Administrative Committee.

~~EE~~DD. "Plan Year" means the 12-month period beginning on January 1st and ending on the following December 31st, commencing in January 1992.

~~EE~~. "QDRO" means a "qualified domestic relations order," which is a domestic relations order that the Administrative Committee has determined satisfies the requirements of a qualified domestic relations order, as defined in Code section 414(p)(1), and is consistent with the terms of this Plan.

SECTION 2. Section 5.19.100 is hereby amended to read as follows:

5.19.100 Benefit distributions.

. . . .

B. Separation from Employment. If a Participant incurs a Separation from Employment prior to his attainment of age 50, the vested amount credited to his Investment Account shall become payable to the Participant or his Beneficiary on the date 60 days after the Participant incurs such Separation from Employment and shall be distributed in a single cash payment as soon as administratively feasible after the Participant elects, on a form provided by the Administrative Committee or its Agent, to receive his distribution. ~~In lieu of taking a distribution currently, a Participant may: (1) defer the distribution of his benefits for up to 24 months pending rehire, or (2) if his Investment Account balance exceeds \$1,000.00, defer distribution of his benefits until a later date, but not beyond age 70 1/2.~~ If a Participant does not make a timely election regarding the distribution of his benefits after receiving the notice required under Code section 402(f), the Participant will be deemed to have elected to defer distribution of his benefits, ~~with the exception that the Participant's benefits will be distributed in a single cash payment as soon as administratively feasible, without the Participant's consent, if the Participant's Investment Account balance is \$1,000.00 or less on the date of distribution.~~ (but not beyond age 70 ½); provided, however, that a Participant's Investment Account will be automatically distributed in cash as soon as administratively practicable following the date that is 24 months after his Separation from Employment if his Investment Account balance is \$1000 or less on the day of the distribution and he

has not timely elected to roll over his distribution after receiving the notice required under Code section 402(f). The electing Participant or Beneficiary shall furnish such information as the County or its Agent may require. All administrative fees related to the distribution of the Participant's benefits upon Separation from Employment shall be deducted from the Participant's account prior to distribution.

SECTION 3. Section 5.19.110 is hereby amended to add a new subsection H. to read as follows:

5.19.110 Administration of the plan.

....

H. The CAO shall develop, adopt and implement policies consistent with applicable guidance issued by the Internal Revenue Service providing for the correction of any operational errors under the Plan. Pursuant to such policies, the CAO may require a County department to make contributions to the Plan to complete an appropriate correction with respect to a Participant employed within that department. The Plan Administrator shall administer the Plan in accordance with any correction policies adopted by the CAO.

SECTION 4. Section 5.19.175 is hereby amended to read as follows:

5.19.175 Rights of an Alternate Payee under a CDROQDRO.

A. Notwithstanding Section 5.19.170, an Alternate Payee shall have the right to make a claim for any benefits awarded to the Alternate Payee pursuant to a CDROQDRO as provided in this section. If an Alternate Payee is awarded a specified

interest in the Investment Account of the Participant pursuant to a ~~CDRO~~QDRO, such interest of the Alternate Payee shall be segregated and separately accounted for by the Trustee in the name and for the benefit of the Alternate Payee.

B. Upon receipt of a domestic relations order, or, if earlier, written notice that a domestic relations order may be sought, the Administrative Committee shall suspend distributions from the Participant's Investment Account, and shall take steps to ensure that the Participant and each Alternate Payee is aware of the order or proposed order and the suspension of distributions from the Participant's Investment Account. Moreover, the Administrative Committee shall determine, within a reasonable period after receipt of such order, whether such order is a ~~CDRO~~QDRO. If the order is determined to be a ~~CDRO~~QDRO, the Alternate Payee's interest under such order shall be segregated and/or distributed in accordance with the ~~CDRO~~QDRO and this Section 5.19.175. ~~If the order is determined not to be a CDRO, and the domestic relations order is not modified as necessary to constitute a CDRO within a reasonable period of time after such determination, the suspension of distributions from the Participant's Investment Account shall be discontinued. If an order is not received within a reasonable period of time after the County has been notified that such an order is being sought, the suspension of distributions from the Participant's Investment Account shall be discontinued. The suspension of distributions from the Participant's Investment Account shall be discontinued only in accordance with a QDRO or other documentation as required by the Plan Administrator demonstrating that no benefits have been awarded to the Alternate Payee.~~

C. Distributions to the Alternate Payee shall be made in accordance with the ~~GDRO~~QDRO provided that the ~~GDRO~~QDRO does not provide for distributions earlier than permitted by Code section 457(d) or otherwise conflict with the Plan's distribution provisions or the provisions of this section. On or after January 1, 2004, regardless of whether the Participant is eligible to take a distribution under the Plan, the ~~GDRO~~QDRO may provide (or may be amended to provide) for an immediate distribution of the Alternate Payee's interest thereunder to the Alternate Payee. If a ~~GDRO~~QDRO does not provide the form of distribution of benefits payable to an Alternate Payee, the Alternate Payee shall have the right to elect distribution in any form provided under this section. Pursuant to the ~~GDRO~~QDRO or the Alternate Payee's election, the Alternate Payee's interest may be distributed ~~in cash in a lump sum payment or in equal monthly, quarterly or annual installments not extending over more than fifteen years.~~ in any form of payment available to the Participant; provided, however, that such payment shall be shall be made in accordance with Code Section 401(a)(9) and applicable Treasury Regulations promulgated thereunder.

D. Unless the ~~GDRO~~QDRO provides otherwise, an Alternate Payee shall have the right, in the same manner as a Participant, to designate a Beneficiary, who shall receive benefits payable to the Alternate Payee in the event that all of the Alternate Payee's benefits have not been distributed at the time of the Alternate Payee's death. If the Alternate Payee does not designate a Beneficiary, or if the Beneficiary predeceases the Alternate Payee, benefits payable to the Alternate Payee which have not been distributed shall be paid to the Alternate Payee's estate. Any death benefits payable

under this section shall be paid in a lump sum as soon as administratively practicable after the Alternate Payee's death and as soon as permissible in accordance with Code section 457(d), with or without the Beneficiary's request.

SECTION 5. Section 5.25.020 is hereby amended to read as follows:

5.25.020 Definitions.

. . .

C. "Alternate Payee" means any spouse or former spouse of a Participant who is recognized under a ~~CDRO~~QDRO as having a right to receive all, or a portion of, the benefits payable under the Plan with respect to such Participant.

. . .

~~K. "CDRO" means a "certified domestic relations order," which is a domestic relations order that the Administrative Committee has determined satisfies the requirements of a qualified domestic relations order, as defined in Code Section 414(p)(1), and is consistent with the terms of this Plan.~~

~~L~~K. "Code" means the Internal Revenue Code of 1986, as amended.

~~M~~L. "Compensation" means base rate, as established in Title 6 of the Los Angeles County Code, as amended, plus any monthly bonus established as a designated number of schedules and/or levels in the Standardized Salary Schedule contained in such Title 6. Compensation shall not include any of the following:

1. Overtime compensation;
2. Any lump-sum payoff or reimbursement for unused accumulated overtime, vacation, holiday time, or sick leave benefits;

3. Compensation pursuant to Section 6.16.010 of the Los Angeles County Code;

4. Any hourly bonus;

5. Any monthly bonus established as a flat dollar amount or as a percentage of base rate;

6. Except as provided in Section 5.25.055, any Settlement Award (as defined in Section 5.25.055).

Effective beginning on and after April 1, 2010, or such later date as may be determined by the Chief Administrative Officer when the human resources management system reflecting this provision is implemented, each reference to "monthly bonus" in this Section 5.25.020.ML shall be deemed to be a reference to "payroll period bonus."

NM. "Core Funds" means the investment alternatives designated by the Administrative Committee as available investment options under the Plan. The Administrative Committee shall design the investment policies governing the Core Funds.

ON. "County" means the County of Los Angeles and (i) any governmental entity of which the Board is the governing body, and (ii) any Trial Court Entity to the extent participation in the Plan by such Entity is authorized by state law or rules of court and provided such Entity has not elected not to participate in the Plan.

PO. "Deferred Account" means an account established by the Trustee for a Participant to which any Deferred Compensation Contribution and, effective September 1, 2003, any Catch-Up Contributions, subject to any action taken by the

Administrative Committee under Section 5.25.060 to establish a separate account or subaccount for such Catch-Up Contributions, made for each Participant, and any earnings and investment gains or losses allocable thereto, shall be credited.

QP. "Deferred Compensation Contribution" means any amount of Eligible Earnings deferred by a Participant pursuant to a Participation Agreement. Effective on or after September 1, 2003, such term shall also include any Catch-Up Contributions made to the Plan on behalf of a Participant as specified in Section 5.25.040 C.

RQ. "Disability" means medically determinable physical or mental impairment of such a nature that the Participant is unable to engage in any substantial gainful activity, which impairment can be expected to result in death or to be of long-continued and indefinite duration, as determined by the County upon the basis of evidence satisfactory to it.

SR. "Effective Date" means January 23, 1981, with respect to the Deferred Compensation Plan originally established in Chapter 5.24 of the County Code, September 1, 1984, with respect to the Thrift Plan originally established by this Chapter 5.25 of the County Code, and October 1, 1991 (also known as the "Merger Date"), with respect to this Plan, which resulted from the merger and continuation of both the Deferred Compensation Plan and the Thrift Plan as described in Section 5.25.105. The "Restatement Effective Date" for this Plan is January 1, 1999, unless a provision expressly states otherwise. Certain provisions of this amendment and restatement, however, are effective before or after the effective date. Provisions which are effective prior to the Effective Date shall be deemed to amend the corresponding provisions of

the Plan as amended and in effect before this restatement. Events occurring before the applicable effective date of any provisions of this restatement shall be governed by the applicable provisions of the Plan in effect on the date of the event. Certain provisions of this amendment and restatement are intended as good faith compliance with the requirements of EGTRRA and are to be construed in accordance with EGTRRA and guidance issued thereunder.

TS. "Eligible Earnings" means any compensation for service performed for the County which is currently includible in gross income under the Code. Any monetary award received for recruitment of registered nurse employees shall not be included in Eligible Earnings. On or after January 1, 2003, Eligible Earnings shall have the same meaning as Includible Compensation.

UT. "Eligible Employee" means a full-time permanent Employee (i) who is within an employment classification established by the County, and (ii) to whom eligibility to participate in this Plan has been extended pursuant to a memorandum of understanding or other authorization approved by the Board. For purposes hereof, "full-time permanent" means any Employee appointed to an "A," "L," or "N" item pursuant to Title 6 of the Los Angeles County Code or any Employee appointed to a "D" item pursuant to said Title 6 who is required to possess a California license to practice as a Registered Nurse. Any Employee who would otherwise cease to be an Eligible Employee because of a change in employment classification and/or withdrawal from a representation unit shall remain an Eligible Employee until the last day of the month following the month in which such change or withdrawal occurs or such later date as the

CAO may provide. Effective as of December 1, 1993, Special Eligible Employees as defined in Section 5.25.020 TT shall be treated as if they are Eligible Employees until March 31, 2004, for purposes of making Deferred Compensation Contributions and Matching Contributions.

VU. "Eligible Rollover Distribution" means any distribution made on or after January 1, 2002 of all or part of the balance to the credit of the Participant in an Eligible Retirement Plan other than: (i) any distribution which is one of a series of substantially equal periodic payments made not less frequently than annually for the life (or life expectancy) of a Participant or beneficiary or the joint lives (or joint life expectancies) of such individual and his designated beneficiary, or for a specified period of 10 years or more; (ii) any distribution to the extent such distribution is required by Code Section 401(a)(9); (iii) any distribution which is made upon hardship or unforeseeable emergency of the employee; and (iv) any distribution which is (a) a return of elective deferrals described in Section 1.415-6(b)(6)(iv) of the Treasury Regulations which is returned due to the limitations under Code Section 415, (b) a corrective distribution of excess contributions described in Section 1.401(k)-1(f)(4) of the Treasury Regulations, excess deferrals described in Section 1.402(g)-1(e)(3) of the Treasury Regulations or excess aggregate contributions described in Section 1.401(m)-1(e)(3) of the Treasury Regulations, together with the income allocable thereto, (c) a loan treated as a distribution under Code Section 72(p) and not excepted from such treatment under Code Section 72(p)(2), (d) a deemed distribution of a loan in default, (e) a dividend on employer securities described in Code Section 404(k), (f) the P.S. 58 cost of life

insurance coverage, and (g) any other similar item designated by the Commissioner of Internal Revenue.

~~W~~V. "Eligible Retirement Plan" means: (i) an individual retirement account under Code Section 408(a); (ii) a "conduit" individual retirement account described in Code Section 408(d)(3)(A)(ii); (iii) an individual retirement annuity under Code Section 408(b); (iv) an annuity plan described in Code Section 403(a); (v) a plan which is qualified under Code Section 401(a); (vi) a tax-sheltered annuity contract under Code Section 403(b); (vii) an eligible deferred compensation plan under Code Section 457(b) which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state; and (viii) effective for distributions made on or after January 1, 2008, a Roth IRA under Code Section 408A.

~~X~~W. "Employee" means an individual who has been determined by the County (regardless of any determination made by any other person or entity) to be a common law employee of the County for federal income and/or employment tax purposes. If it is determined that an individual was erroneously categorized as not being an Employee, he or she shall be treated as an Employee under the Plan only prospectively from the date of such determination.

~~Y~~X. "Entry Date" means the 1st day of the month or the 16th day of the month.

~~Z~~Y. "Includible Compensation" means wages, within the meaning of Section 3401(a) of the Code (for purposes of income tax withholding) but determined without regard to any rules that limit the remuneration included in wages based on the nature or location of the employment or the services performed, paid to an Employee by the

County for services performed for the County. Includible Compensation also includes (i) any elective deferral (as defined in Code Section 402(g)(3)), such as Tax Deferred Contributions under the Savings Plan, (ii) any amount which is contributed to a plan sponsored by the County at the election of the Employee and which is not includible in gross income under Code Sections 125, 132(f)(4) or 457, and (iii) any amount that is not available in cash to an Employee under the Choices, Options, Flexible Benefit Plans or Mega-Flex Plans (or a successor plan) because the Employee is unable to certify that the Employee has other health coverage. In order to be taken into account as Includible Compensation, an item of compensation must be paid (or treated as paid) to the Participant prior to Separation from Employment, provided, however, the following types of post-employment payments are included within Includible Compensation if they are paid by the later of 2½ months after Separation from Employment or the end of the calendar year in which the Separation from Employment occurs: (i) payments that, absent a Separation from Employment, would have been paid to the Participant in the normal course of employment and are regular compensation for services during regular working hours or outside regular working hours (such as overtime or shift differential), bonuses or other similar compensation; and (ii) Termination Pay. Except as provided in Section 5.25.055, Includible Compensation shall not include any Settlement Award (as defined in Section 5.25.055). Any item of taxable income that is not included in this definition of Includible Compensation may not be deferred in accordance with a Participant's Participation Agreement. Effective beginning on and after April 1, 2010, or such later date as may be determined by the Chief Administrative Officer when the

human resources management system reflecting this provision is implemented, Includible Compensation shall not include Nonelective Contributions (as that term is defined in Los Angeles County Code Sections 5.27.020, 5.28.020, 5.33.020 or 5.37.020, as applicable) unless those Nonelective Contributions are received by the Participant as a cash benefit under the Choices, Options, Flexible Benefit or Mega-Flex plans (in accordance with Los Angeles County Code Sections 5.27.050E, 5.28.050E, 5.33.050F or 5.37.050F, as applicable).

AAZ. "Investment Accounts" means the accounts established by the Trustee for a Participant pursuant to Section 5.25.060, comprised of the Deferred Account, the Matching Account and, effective September 1, 2003, the Rollover Account. This term shall also include a Catch-Up Account if the Administrative Committee establishes a separate account for Catch-Up Contributions pursuant to its authority under Section 5.25.060.

BBAA. "Investment Fund" means the Core Funds, the Participant Loan Fund, and the Brokerage Money Market Fund and Brokerage Investments in which Participants invest through a Personal Brokerage Account Window, if such Personal Brokerage Account Window is authorized by the Administrative Committee. Any such Investment Fund shall be consistent with any limitations on forms of investment imposed under applicable state law.

CCBB. "Investment Manager" means a person or entity appointed by the Administrative Committee who, with respect to any Investment Fund, except the Brokerage Investments in which Participants invest through a Personal Brokerage

Account Window, has the discretion to determine which assets in such Fund shall be sold (or exchanged) and what investments shall be acquired for such Fund or a person or entity that provides investment services to an investment company registered under the Investment Company Act of 1940. Any Investment Manager must be either registered as an investment adviser under the Investment Advisers Act of 1940, a bank as defined thereunder or an insurance company qualified to manage, acquire or dispose of Plan assets under the laws of more than one state, provided, however, that this requirement shall not apply to the County Treasurer and, with respect to an Investment Fund that provides for investments in securities issued by an investment company registered under the Investment Company Act of 1940, the requirements of that act shall control. Any Investment Manager shall accept such appointment in writing and shall constitute a fiduciary with respect to the investment of Plan assets held in the particular Investment Fund for which the appointment applies, unless such person would not be treated as investing assets of the Plan if the Plan were covered by the Employee Retirement Income Security Act of 1974, as amended.

~~DDCC~~. "Matching Account" means an account established by the Trustee for a Participant to which any Matching Contribution, and any earnings and investment gains or losses allocable thereto, shall be credited.

~~EEDD~~. "Matching Contribution" means a portion of the Matching Fund determined pursuant to Section 5.25.050.

~~FFEE~~. "Matching Fund" means the aggregate amount designated by the County to be used during a period specified by the County to match Deferred Compensation

Contributions pursuant to Section 5.25.050.

GGFF. "Normal Retirement Age" means age 70½, unless the Participant shall have designated an alternative normal retirement age. A Participant's Normal Retirement Age shall not be earlier than age 65 or the earliest date at which the Participant will become eligible to retire and receive a full pension benefit pursuant to the provisions of the County Employees Retirement Law of 1937 or the Judges Retirement Law, as amended, and shall not be later than age 70½. Notwithstanding the foregoing, a Participant who is a qualified police or firefighter, as defined in Code Section 415(b)(2)(H)(ii)(I), may designate a Normal Retirement Age that is not earlier than age 40 and shall not be later than age 70½. If a Participant uses the increased deferral limit set forth in Section 5.25.040 B2, such Participant shall be deemed to have selected as his or her Normal Retirement Age the third Plan Year following the first Plan Year in which such increased limit is utilized or such earlier year as is necessary to comply with the limitations set forth above. Once a Participant has utilized the increased deferral limit to any extent, his or her Normal Retirement Age may not thereafter be changed for the purpose of utilizing the additional deferral limit provided under Section 5.25.040 B2 of this Plan.

HHGG. "Participant" means an Eligible Employee or a former Eligible Employee who has entered into a Participation Agreement and who has a balance in his or her Investment Accounts.

HHH. "Participation Agreement" means the agreement with the County by which an Eligible Employee elects to become a Participant under the Plan as of an

Entry Date and to defer irrevocably a portion of his or her Eligible Earnings.

~~JJI~~. "Participant Loan Fund" means the Investment Fund provided for in Section 5.25.080 I.

~~KKJJ~~. "Personal Brokerage Account Window" means an arrangement under which a Participant contracts with the Broker to open a brokerage account through which a portion of his or her Investment Account may be invested in the Brokerage Money Market Fund and various Brokerage Investments. The Administrative Committee shall have authority to authorize or discontinue the Personal Brokerage Account Window at its discretion.

~~LLKK~~. "Plan" means the County of Los Angeles Deferred Compensation and Thrift Plan, the terms and provisions of which are herein set forth, as the same may be amended, supplemented or restated from time to time.

~~MMLL~~. "Plan Year" means a calendar year.

~~MM~~. "QDRO" means a "qualified domestic relations order," which is a domestic relations order that the Administrative Committee has determined satisfies the requirements of a qualified domestic relations order, as defined in Code Section 414(p)(1), and is consistent with the terms of this Plan.

. . .

SECTION 6. Section 5.25.050 is hereby amended to read as follows:

5.25.050 Matching contributions.

. . .

D. Notwithstanding subsection A, unless another matching contribution rate is established in a memorandum of understanding affecting the fringe benefits of a Participant: (i) no Matching Contributions shall be made by the County with regard to Deferred Compensation Contributions made with respect to payroll periods starting January 1, 2011 and continuing through June 30, 2011; and (ii) for every dollar of a Participant's Deferred Compensation Contributions made with respect to each payroll period starting July 1, 2011 and continuing through June 30, 2012, the County shall contribute one dollar from the Matching Fund; provided, however, that: (a) for Participants who are Eligible Employees pursuant to a memorandum of understanding the County's maximum contribution shall be 2 percent of such Participant's Compensation for each such payroll period, and (b) for all other Eligible Employees the County's maximum contribution shall be 3 percent of such Participant's Compensation for each such payroll period. The aggregate amount of Matching Contributions under the Plan for such July 1st to June 30th period shall not exceed the respective dollar caps to be determined by the Board of Supervisors for each category of Participants in subsections 5.25.050(D)(ii)(a) and (b). This subsection D shall not apply to Trial Court Employees or judges, who shall continue to receive Matching Contributions pursuant to the provisions set forth in the foregoing subsections of this Section 5.25.050.

SECTION 7. Section 5.25.080 is hereby amended to read as follows:

5.25.080 Benefit distributions, withdrawals and loans.

K. Amounts rolled over into this Plan may be distributed at any time following the rollover.

SECTION 8. Section 5.25.090 is hereby amended to read as follows:

5.25.090 Administration of the plan.

...

C. Authority.

12. The CAO shall develop, adopt and implement policies consistent with applicable guidance issued by the Internal Revenue Service providing for the correction of any operational errors under the Plan (apart from any corrections made pursuant to Settlement Awards pursuant to Section 5.25.055). Pursuant to such policies, the CAO may require a County department to make contributions to the Plan to complete an appropriate correction with respect to a Participant employed within that department. The Plan Administrator shall administer the Plan in accordance with any correction policies adopted by the CAO.

...

G. Expense Charges to Plan.

...

3. In the event that the Plan accumulates (i) fees in excess of actual administrative expenses, or (ii) unallocated earnings from Plan operations, the Administrative Committee shall allocate excess fees and earnings first by establishing a reserve for contingencies and payment of planned obligations not to exceed 1/2 of the total annual County fees (other than TPA fees) charged to Participants, and then by

allocating any remainder by reducing TPA fees charged to Participants or other administrative fees paid by the County by a method determined by the Administrative Committee.

SECTION 9. Section 5.25.125 is hereby amended to read as follows:

5.25.125 Rights of an alternate payee under a CDRO.

A. Notwithstanding Section 5.25.120, an Alternate Payee shall have the right to make a claim for any benefits awarded to the Alternate Payee pursuant to a CDRO as provided in this section. If an Alternate Payee is awarded a specified interest in the Accounts of the Participant pursuant to a CDRO, such interest of the Alternate Payee shall be segregated and separately accounted for by the Trustee in the name and for the benefit of the Alternate Payee.

B. Upon receipt of a domestic relations order, or, if earlier, written notice that a domestic relations order may be sought, the Administrative Committee shall suspend distributions from the Participant's Investment Accounts, and shall take steps to ensure that the Participant and each Alternate Payee is aware of the order or proposed order and the suspension of distributions from the Participant's Investment Accounts. Moreover, the Administrative Committee shall determine, within a reasonable period after receipt of such order, whether such order is a CDRO. If the order is determined to be a CDRO, the Alternate Payee's interest under such order shall be segregated and/or distributed in accordance with the CDRO and this Section 5.25.125. ~~If the order is determined not to be a CDRO, and the domestic relations order is not modified as necessary to constitute a CDRO within a reasonable period of time~~

~~after such determination, the suspension of distributions from the Participant's Investment Accounts shall be discontinued. If an order is not received within a reasonable period of time after the County has been notified that such an order is being sought, the suspension of distributions from the Participant's Investment Accounts shall be discontinued.~~ The suspension of distributions from the Participant's Investment Account shall be discontinued only in accordance with a QDRO, a court order demonstrating that no benefits have been awarded to the Alternate Payee, or other documentation as determined by the Plan Administrator.

C. Distributions to the Alternate Payee shall be made in accordance with the ~~CDRO~~QDRO provided that the ~~CDRO~~QDRO does not provide for distributions earlier than permitted by Code section 457(d) or otherwise conflict with the Plan's distribution provisions or the provisions of this Section. On or after September 1, 2003, regardless of whether the Participant is eligible to take a distribution under the Plan, the ~~CDRO~~QDRO may provide (or may be amended to provide) for an immediate distribution of the Alternate Payee's interest thereunder to the Alternate Payee. If a ~~CDRO~~QDRO does not provide the form of distribution of benefits payable to an Alternate Payee, the Alternate Payee shall have the right to elect distribution in any form provided under this Section. Pursuant to the ~~CDRO~~QDRO or the Alternate Payee's election, the Alternate Payee's interest may be distributed in cash in a lump sum payment or in equal monthly, quarterly or annual installments not extending over more than fifteen years.

D. Segregation of Alternate Payee's Interest.

1. Generally, the Alternate Payee's interest specified in the

GDRQQDRO shall be segregated and/or distributed from the Participant's Accounts, and the Core Funds in which such Accounts are invested, on a pro rata basis. If the assets invested in the Core Funds are insufficient to satisfy the GDRQQDRO, the Administrative Committee may transfer amounts from the Personal Brokerage Account Window to the Core Funds as necessary.

2. Notwithstanding subsection D.1. of this Section 5.25.125, a GDRQQDRO may provide for an in-kind division and/or distribution of securities held through the Personal Brokerage Account Window subject to the following requirements: (1) the Alternate Payee is the Participant's former spouse, (2) the GDRQQDRO clearly states the number of shares and the identities of the securities awarded to the Alternate Payee; and (3) either: (a) if the amounts are remaining in the Alternate Payee's Account under the Plan, the Alternate Payee must enter his own contract with the Broker to open a brokerage account through the Personal Brokerage Account Window, or (b) if the amounts are to be distributed in-kind, the Alternate Payee must request, or the GDRQQDRO must provide for, a full distribution of the Alternate Payee's Account from both Core Funds and the Personal Brokerage Account Window and the distribution must be made in the form of a direct rollover to an "Eligible Retirement Plan" as authorized in section 5.25.108 and such Eligible Retirement Plan must accept the in-kind rollover.

E. Following the determination that a domestic relations order is a GDRQQDRO, and segregation of an Alternate Payee's interest, the Alternate Payee shall have the right to direct the investment of his or her interest in the same manner as provided under Section 5.25.070 with respect to the Participant. The Participant shall

continue to have the right to direct the investment of the portion of his or her Accounts that is not awarded to the Alternate Payee pursuant to the CDROQDRO.

F. Unless the CDROQDRO provides otherwise, an Alternate Payee shall have the right, in the same manner as a Participant, to designate a Beneficiary, who shall receive benefits payable to the Alternate Payee in the event that all of the Alternate Payee's benefits have not been distributed at the time of the Alternate Payee's death. If the Alternate Payee does not designate a Beneficiary, or if the Beneficiary predeceases the Alternate Payee, benefits payable to the Alternate Payee which have not been distributed shall be paid to the Alternate Payee's estate. Any death benefits payable under this section shall be paid in a lump sum as soon as administratively practicable after the Alternate Payee's death and as soon as permissible in accordance with Code section 457(d), with or without the Beneficiary's request.

G. Unless the CDROQDRO provides otherwise, an Alternate Payee shall have the right, in the same manner as a Participant, to apply for an Emergency Withdrawal pursuant to 5.25.080E.

SECTION 10. Section 5.26.110 is hereby amended to read as follows:

5.26.110 Amount of matching contributions.

A. Subject to the provisions of the Plan and the Trust Agreement, the County shall contribute to the Investment Funds on account each month an amount equal to four percent (4%) of each Participant's monthly Compensation provided that the year-to-date cumulative Matching Contributions do not exceed such Participant's year-to-date cumulative Tax Deferred Contributions. Effective beginning on and after April 1, 2010,

or such later date, the reference to "month" in this Section 5.26.110.A shall be deemed to be a reference to "payroll period" and the reference to "monthly Compensation" shall be deemed to be a reference to "Compensation for that payroll period." Effective April 1, 2010, or such later date as may be determined by the Chief Administrative Officer when the human resources management system reflecting this provision is implemented, notwithstanding the foregoing, no Matching Contribution will be made for a payroll period after the Participant's Severance Date for which he has no Eligible Earnings.

. . .

F. Notwithstanding the foregoing: (i) no Matching Contributions shall be made by the County with regard to Tax Deferred Contributions made with respect to payroll periods starting January 1, 2011 and continuing through June 30, 2011; and (ii) the County shall contribute to the Investment Funds on account with respect to each payroll period starting July 1, 2011 and continuing through June 30, 2012, an amount equal to three percent (3%) of each Participant's Compensation for that payroll period provided that the year-to-date cumulative Matching Contributions do not exceed such Participant's year-to-date cumulative Tax Deferred Contributions. The aggregate amount of Matching Contributions under the Plan for such July 1st to June 30th period shall not exceed a dollar cap to be determined by the Board of Supervisors. This subsection D shall not apply to Trial Court Employees or judges, who shall continue to receive Matching Contributions pursuant to the provisions set forth in the foregoing subsections of this Section 5.26.110.

SECTION 11. Section 5.26.360 is hereby amended to read as follows:

5.26.360 Authority.

A. Except as otherwise provided in this Plan or Trust Agreement, the Administrative Committee shall have sole and absolute discretion to administer the Plan, interpret the provisions of the Plan, make factual findings with respect to any issues arising under the Plan and determine the rights and benefits of Participants and other persons under the Plan. The Administrative Committee may adopt rules for the administration of the Plan provided that such rules are not inconsistent with the terms of the Plan, except that the Administrative Committee may modify any notice period required by the Plan or designate any officer to serve as the recipient of any form or notice that has to be filed under the Plan. In addition, the Administrative Committee shall remedy possible ambiguities, inequities or inconsistencies in the Plan and shall correct deficiencies and supply omissions therein. Subject to the provisions of Section 5.26.370, such determinations and findings shall be final and conclusive, to the extent permitted by law, as to all interested persons for all purposes of the Plan. The Administrative Committee shall instruct the Trustee or Contractor as to the benefits to be paid hereunder and shall furnish the Trustee or Contractor with any further information reasonably required by it for the purpose of distributing such benefits and making investments in or withdrawals from one or more of the Investment Funds. The Administrative Committee shall also have the authority to contract with one or more private firms for services related to the Plan, consistent with Section 44.7 of the Los Angeles County Charter and Chapter 2.121 of this County Code. The CAO shall

develop, adopt and implement policies consistent with applicable guidance issued by the Internal Revenue Service providing for the correction of any operational errors under the Plan. Pursuant to such policies, the CAO may require a County department to make contributions to the Plan to complete an appropriate correction with respect to a Participant employed within that department. The Plan Administrator shall administer the Plan in accordance with any correction policies adopted by the CAO.

...

SECTION 12. Section 5.26.420 is hereby amended to read as follows:

5.26.420 Expense Charges to Plan.

...

D. In the event that the Plan accumulates (1) fees in excess of actual administrative expenses, or (2) unallocated earnings from Plan operations, or (3) any amounts transferred from the contingency and expense reserve established under Section 5.23.080.1.3 of the Deferred Earnings Plan as a result of the merger of the Deferred Earnings Plan into this Plan, the Administrative Committee shall allocate excess fees and earnings first by establishing a reserve for contingencies and payment of planned obligations not to exceed one-half of the total annual County fees (other than TPA fees) charged to Participants, and then by allocating any remainder by reducing TPA fees charged to Participants or other administrative fees paid by the County by a method determined by the Administrative Committee.

SECTION 13. Section 5.26.465 is hereby amended to read as follows:

5.26.465 Rights of an Alternate Payee Under a QDRO.

. . . .

B. Upon receipt of a domestic relations order, or, if earlier, written notice that a domestic relations order may be sought, the Administrative Committee shall suspend distributions from the Participant's Account, and shall take steps to ensure that the Participant and each Alternate Payee is aware of the order or proposed order and the suspension of distributions from the Participant's Account. Moreover, the Administrative Committee shall determine, within a reasonable period after receipt of such order, whether such order is a QDRO. If the order is determined to be a QDRO, the Alternate Payee's interest under such order shall be segregated and/or distributed in accordance with the QDRO and this Section 5.26.465. ~~If the order is determined not to be a QDRO, and the domestic relations order is not modified as necessary to constitute a QDRO within a reasonable period of time after such determination, the suspension of distributions from the Participant's Account shall be discontinued. If an order is not received within a reasonable period of time after the County has been notified that such an order is being sought, the suspension of distributions from the Participant's Account shall be discontinued.~~ The suspension of distributions from the Participant's Investment Account shall be discontinued only in accordance with a QDRO, a court order demonstrating that no benefits have been awarded to the Alternate Payee, or other documentation as determined by the Plan Administrator.

C. Distributions to the Alternate Payee shall be made in accordance with the QDRO provided that the QDRO does not conflict with the Plan's distribution provisions or the provisions of this section. Regardless of whether the Participant is eligible to take

a distribution under the Plan, the QDRO may provide for an immediate distribution of the Alternate Payee's interest thereunder to the Alternate Payee. If a QDRO does not provide the form of distribution of benefits payable to an Alternate Payee, the Alternate Payee shall have the right to elect distribution in any form provided under this section. Pursuant to the QDRO or the Alternate Payee's election, the Alternate Payee's interest may be distributed ~~in cash in a lump sum payment or in equal monthly, quarterly or annual installments not extending over more than fifteen years~~ in any form of payment available to the Participant; provided, however, that such payments shall be made in accordance with Code Section 401(a)(9) and applicable Treasury Regulations promulgated thereunder.

SECTION 14. Pursuant to Government Code Section 25123(e) and (f), this ordinance shall take effect immediately.

[519020RDCEO]

